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HOUSE BILL 865

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Daniel R. Foley

AN ACT

RELATING TO CRIMINAL LAW; PROVIDING PENALTIES FOR POSSESSION OF CERTAIN DRUG PRECURSORS; AMENDING AND ENACTING SECTIONS OF THE DRUG PRECURSOR ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-31B-1 NMSA 1978 (being Laws 1989, Chapter 177, Section 1) is amended to read:

"30-31B-1. SHORT TITLE. -- [~~Sections 1 through 18 of this act~~] Chapter 30, Article 31B NMSA 1978 may be cited as the "Drug Precursor Act". "

Section 2. Section 30-31B-2 NMSA 1978 (being Laws 1989, Chapter 177, Section 2) is amended to read:

"30-31B-2. DEFINITIONS. -- As used in the Drug Precursor Act:

A. "administer" means the direct application of a

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1 controlled substance by any means to the body of a patient or
2 research subject by a practitioner or his agent;

3 B. "agent" includes an authorized person who acts
4 on behalf of a manufacturer, distributor or dispenser. "Agent"
5 does not include a common or contract carrier, public
6 warehouseman or employee of the carrier or warehouseman;

7 C. "board" means the board of pharmacy;

8 D. "bureau" means the bureau of narcotics and
9 dangerous drugs of the United States department of justice or
10 its successor agency;

11 E. "controlled substance" means a drug or substance
12 listed in Schedules I through V of the Controlled Substances
13 Act or regulations adopted thereto;

14 F. "controlled substance analog" means a substance
15 other than a controlled substance that has a chemical structure
16 substantially similar to that of a controlled substance in
17 Schedule I, II, III, IV or V or which was specifically designed
18 to produce effects substantially similar to that of controlled
19 substances in Schedule I, II, III, IV or V. Examples of
20 chemical classes in which controlled substance analogs are
21 found include, but are not limited to, the following:

- 22 (1) phenethylamines;
- 23 (2) N-substituted piperidines;
- 24 (3) morphinans;
- 25 (4) ecogonines;

- 1 (5) quinazolinones;
2 (6) substituted indoles; and
3 (7) arylcycloalkylamines.

4 Specifically excluded from the definition of "controlled
5 substance analog" are those substances which are generally
6 recognized as safe and effective within the meaning of the
7 Federal Food, Drug and Cosmetic Act or have been manufactured,
8 distributed or possessed in conformance with the provisions of
9 an approved new drug application or an exemption for
10 investigational use within the meaning of Section 505 of the
11 Federal Food, Drug and Cosmetic Act;

12 G. "deliver" means the actual, constructive or
13 attempted transfer from one person to another of a controlled
14 substance or controlled substance analog, whether or not there
15 is an agency relationship;

16 H. "dispense" means to deliver a controlled
17 substance to an ultimate user or research subject pursuant to
18 the lawful order of a practitioner, including the
19 administering, prescribing, packaging, labeling or compounding
20 necessary to prepare the controlled substance for that
21 delivery;

22 I. "dispenser" means a practitioner who dispenses
23 and includes hospitals, pharmacies and clinics where controlled
24 substances are dispensed;

25 J. "distribute" means to deliver other than by

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1 administering or dispensing a controlled substance or
2 controlled substance analog;

3 K. "drug" means substances recognized as drugs in
4 the official United States pharmacopoeia, official homeopathic
5 pharmacopoeia of the United States, official national formulary
6 or any respective supplement to these publications. "Drug"
7 does not include devices or their components, parts or
8 accessories;

9 L. "drug precursor" means any substance, material,
10 compound, mixture or preparation listed in Section [~~3 of the~~
11 ~~Drug Precursor Act~~] 30-31B-3 NMSA 1978 or regulations adopted
12 thereto or any of their salts or isomers. "Drug precursor"
13 specifically excludes those substances, materials, compounds,
14 mixtures or preparations which are prepared for dispensing
15 pursuant to a prescription or over-the-counter distribution as
16 a substance which is generally recognized as safe and effective
17 within the meaning of the Federal Food, Drug and Cosmetic Act
18 or have been manufactured, distributed or possessed in
19 conformance with the provisions of an approved new drug
20 application or an exemption for investigational use within the
21 meaning of Section 505 of the Federal Food, Drug and Cosmetic
22 Act;

23 M "immediate precursor" means a substance which is
24 a compound commonly used or produced primarily as an immediate
25 chemical intermediary used in the manufacture of a controlled

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1 substance, the control of which is necessary to prevent,
2 curtail or limit the manufacture of controlled substances;

3 N. "iodine matrix" means iodine at concentrations
4 greater than one and one-half percent by weight in a matrix or
5 solution;

6 [~~N.-~~] O. "license" means a license issued by the
7 board to manufacture, possess, transfer or transport a drug
8 precursor;

9 [~~Ø.-~~] P. "manufacture" means the production,
10 preparation, compounding, conversion or processing of a drug
11 precursor by extraction from substances of natural origin,
12 independently by means of chemical synthesis or by a
13 combination of extraction and chemical synthesis and includes
14 any packaging or repackaging of the substance or labeling or
15 relabeling of its container, except that this term does not
16 include the preparation or compounding of a controlled
17 substance by a practitioner:

18 (1) as an incident to his administering or
19 dispensing of a controlled substance in the course of his
20 professional practice; or

21 (2) by his agent under his supervision for the
22 purpose of or as an incident to research, teaching or chemical
23 analysis and not for sale;

24 [~~P.-~~] Q. "person" includes an individual, sole
25 proprietorship, partnership, corporation, association, the

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1 state or any political subdivision of the state or other legal
2 entity;

3 [~~Q-~~] R. "possession" means to actively or
4 constructively exercise dominion over;

5 [~~R-~~] S. "practitioner" means a physician, dentist,
6 veterinarian or other person licensed to prescribe and
7 administer drugs which are subject to the Controlled Substances
8 Act;

9 [~~S-~~] T. "prescription" means an order given
10 individually for the person for whom is prescribed a controlled
11 substance, either directly from the prescriber to the
12 pharmacist or indirectly by means of a written order signed by
13 the prescriber and in accordance with the Controlled Substances
14 Act or regulations adopted thereto; and

15 [~~T-~~] U. "transfer" means the sale, possession with
16 intent to sell, barter or giving away of a controlled
17 substance. "

18 Section 3. Section 30-31B-3 NMSA 1978 (being Laws 1989,
19 Chapter 177, Section 3) is amended to read:

20 "30-31B-3. DRUG PRECURSORS LIST. -- Any substance,
21 material, compound, mixture or preparation of the following
22 substances or any of their salts or isomers are subject to
23 regulation by the board and to the requirements of the Drug
24 Precursor Act:

25 A. 1-phenylcyclohexylamine;

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- 1 B. 1- pi peri di nocycl ohexanecarboni tri le;
- 2 C. ephedri ne;
- 3 D. [~~psuedoephedri ne~~] pseudoephedri ne;
- 4 E. methyl ami ne;
- 5 F. methyl formami de;
- 6 G. phenylacetic acid; [~~and~~]
- 7 H. phenylacetone;
- 8 I. red phosphorus;
- 9 J. anhydrous ammoni a;
- 10 K. iodine matrix; and
- 11 L. crystal iodine. "

12 Section 4. A new section of the Drug Precursor Act is
13 enacted to read:

14 "[NEW MATERIAL] EPHEDRI NE- - PSEUDOEPHEDRI NE- - POSSESSI ON
15 PROHI BITED- - EXCEPTIONS. - -

16 A. A person shall not possess more than six grams
17 of ephedrine or pseudoephedrine.

18 B. The provisions of Subsection A of this section
19 do not apply to a:

- 20 (1) hospi tal ;
- 21 (2) physi ci an;
- 22 (3) pharmaci st;
- 23 (4) retail distri butor;
- 24 (5) whol esal er;
- 25 (6) manufacturer;

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- 1 (7) warehouseman;
- 2 (8) common carrier; or
- 3 (9) person engaged in the regular course of
- 4 conducting a lawful business.

5 C. A person who violates the provisions of
6 Subsection A of this section is guilty of a misdemeanor.

7 D. For the purposes of this section, the amount of
8 ephedrine or pseudoephedrine shall be determined by weighing
9 the pure form of ephedrine or pseudoephedrine and shall not
10 include fillers, inert ingredients, capsules or containers."

11 Section 5. A new section of the Drug Precursor Act is
12 enacted to read:

13 "[NEW MATERIAL] ANHYDROUS AMMONIA-- POSSESSION PROHIBITED--
14 EXCEPTIONS. --

15 A. A person shall not possess any amount of
16 anhydrous ammonia.

17 B. The provisions of Subsection A of this section
18 do not apply to a:

- 19 (1) person who is actively operating land used
- 20 for agricultural purposes;
- 21 (2) retail distributor;
- 22 (3) wholesaler;
- 23 (4) manufacturer;
- 24 (5) warehouseman;
- 25 (6) common carrier; or

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1 (7) person engaged in the regular course of
2 conducting a lawful business.

3 C. A person who violates the provisions of
4 Subsection A of this section is guilty of a misdemeanor."

5 Section 6. A new section of the Drug Precursor Act is
6 enacted to read:

7 "[NEW MATERIAL] RED PHOSPHORUS-- POSSESSION PROHIBITED--
8 EXCEPTIONS. --

9 A. A person shall not possess any amount of red
10 phosphorus.

11 B. The provisions of Subsection A of this section
12 do not apply to a:

- 13 (1) retail distributor;
- 14 (2) wholesaler;
- 15 (3) manufacturer;
- 16 (4) warehouseman;
- 17 (5) common carrier;
- 18 (6) manufacturer of striking surfaces for
19 matches;
- 20 (7) manufacturer of flame retardants;
- 21 (8) manufacturer of explosives or fireworks
22 who is licensed pursuant to federal law;
- 23 (9) chemistry laboratory operated or
24 maintained by a public or private secondary school;
- 25 (10) chemistry laboratory operated or

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1 maintained by a public or private institution of higher
2 learning; or

3 (11) person engaged in the regular course of
4 conducting a lawful business.

5 C. A person who violates the provisions of
6 Subsection A of this section is guilty of a misdemeanor."

7 Section 7. A new section of the Drug Precursor Act is
8 enacted to read:

9 "[NEW MATERIAL] CRYSTAL IODINE-- IODINE MATRIX-- POSSESSION
10 PROHIBITED-- EXCEPTIONS. --

11 A. A person shall not possess more than two ounces
12 of crystal iodine or iodine matrix.

13 B. The provisions of Subsection A of this section
14 do not apply to a:

15 (1) person in possession of a valid
16 prescription issued by a physician;

17 (2) retail distributor;

18 (3) wholesaler;

19 (4) manufacturer;

20 (5) warehouseman;

21 (6) common carrier;

22 (7) licensed veterinarian;

23 (8) licensed physician;

24 (9) licensed pharmacist;

25 (10) farrier;

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(11) hospital; or

(12) person engaged in the regular course of
conducting a lawful business.

C. A person who violates the provisions of
Subsection A of this section is guilty of a misdemeanor."

Section 8. EFFECTIVE DATE. --The effective date of the
provisions of this act is July 1, 2003.